

Assembly Bill No. 333

Passed the Assembly July 2, 1998

Chief Clerk of the Assembly

Passed the Senate June 25, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Section 1734.5 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 333, Figueroa. Insurance: fiduciary funds.

Existing law requires that fiduciary funds received by licensed insurance agents be maintained in a trustee bank account or securities issued by or backed by the United States or in certificates of deposit of banks or savings and loan associations licensed by any state government or by the United States.

This bill would add certain state and local bonds and short-term notes that are rated by Moody's Investor Service, Inc., or Standard and Poor's Corporation, as specified, to the list of permissible repositories for fiduciary funds.

The people of the State of California do enact as follows:

SECTION 1. Section 1734.5 of the Insurance Code is amended to read:

1734.5. (a) If fiduciary funds, as defined in Section 1733, are received by any person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and the funds are not remitted, or maintained pursuant to subdivisions (a) and (b) of Section 1734, the funds shall be maintained as follows: (1) in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States are pledged for payment of principal and interest; (2) in certificates of deposit of banks or savings and loan associations licensed by any state government within the United States, or the United States government; (3) in repurchase agreements collateralized by securities issued by the United States government; or (4) in (A) bonds and other obligations of



this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments upon all property within its boundaries subject to taxation or assessment by the local agency or district to pay the principal and interest of the obligations, and (B) revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by this state, or a local agency or district or by a department, board, agency or authority thereof, the bonds and obligations described in subparagraphs (A) and (B) to either have maturities of not more than one year, or afford the holder of the obligation the unilateral right to redeem the obligation from its issuer within one year from date of purchase at an amount equal to or greater than its par value, and the bonds and obligations shall be required to be rated at least Aa1, MIG-1/VMIG-1 or Prime-1 by Moody's Investor Service, Inc., or AA, SP-1 or A-1 by Standard and Poor's Corporation.

For the fiduciary funds maintained as provided in paragraphs (1) to (4), inclusive, the bonds, certificates, obligations, certificates of deposit, and repurchase agreements shall be valued on the basis of their acquisition cost.

(b) As a condition to maintaining the fiduciary funds pursuant to this section, a written agreement shall be obtained from each and every insurer or person entitled thereto authorizing the maintenance and the retention of any earnings accruing on the funds.

(c) Evidence of the funds shall be maintained on California business by a bank as defined in Section 102 of the Financial Code, or by a savings and loan association as defined in Section 5057 or 11000 of the Financial Code in a custodian or trust account in California separate from any other funds, in an amount at least equal to the premiums and return premiums, net of commissions received by him or her and unpaid to the persons entitled thereto, or, at their discretion or pursuant to a written contract, for the account of these persons. However, the persons may commingle with the fiduciary funds any



additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(d) The commissioner shall not have jurisdiction over any disputes arising between parties concerning the maintenance of fiduciary funds pursuant to this section. However, this subdivision shall not otherwise affect the authority granted to the commissioner over fiduciary funds by other provisions of this code, or regulations adopted pursuant thereto. As used in this subdivision, the term “parties” shall not include the commissioner.

(e) Investment losses to the principal of fiduciary funds maintained pursuant to this section are the responsibility of the person licensed, whether under a permanent license, restricted license, temporary license, or certificate of convenience, to act in any of the capacities specified in Section 1733, and any obligation to insurers or other persons entitled to the fiduciary funds shall in no way be diminished due to any loss in the value to the principal of the fiduciary funds held pursuant to this section.



Approved _____, 1998

Governor

